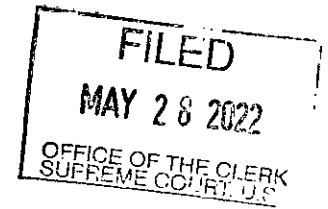


ORIGINAL

21-8061



IN THE
SUPREME COURT OF THE UNITED STATES

BARBRIE LOGAN — PETITIONER

vs.

MGM GRAND DETROIT CASINO — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO
UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

BARBRIE LOGAN

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QUESTION(S) PRESENTED

In a Title VII action between an indigent pro se complainant and private sector employer, who, if anyone, has the responsibility of informing the complainant of her statutory right to apply for an appointment of counsel to represent her in ensuing litigation in a federal district court?

Are indigent pro se Plaintiffs' Title VII rights and remedies abrogated after Defendant's second summary judgment motion is granted without a claim of newly discovered evidence?

After more than four years of litigation in a Title VII sex discrimination and retaliation claim, did Defendant's second summary judgment motion promptly raise an EEOC exhaustion-related defense to bar Plaintiff's evidence and continuing violation and hostile environment claims and justify dismissal of Plaintiff's lawsuit?

LIST OF PARTIES

- ☒ [X] All parties appear in the caption of the case on the cover page.
- ☐ [] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<u>Douglas v California</u>	p.13
<u>General Telephone Co of the Northwest, Inc., v EEOC</u>	p. 12
<u>Hilliard v Volcker</u>	p.7, 13
<u>Legislative History EEO Act of 1972</u>	p.13
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OTHER

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the United States district court appears at Appendix ____ to the petition and is

☒ reported at District Court, Eastern District of Michigan, 2021- Google Scholar;
or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was December 22, 2021

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: February 28, 2022, and a copy of the order denying rehearing appears at Appendix BB.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.

A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment XIV, Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Title VII of the Civil Rights Act of 1964, as amended UNLAWFUL EMPLOYMENT PRACTICES

Sec. 2000e-2. [Section 703]

(a) Employer practices

It shall be an unlawful employment practice for an employer-

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

(d) Training programs

It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.

(m) Impermissible consideration of race, color, religion, sex, or national origin in employment practices

Except as otherwise provided in this subchapter, an unlawful employment practice is established when the complaining party demonstrates that race, color, religion, sex, or national origin was a motivating factor for any employment practice, even though other factors also motivated the practice.

OTHER UNLAWFUL EMPLOYMENT PRACTICES

Sec. 2000E-3. [Section 704]

(a) Discrimination for making charges, testifying, assisting, or participating in enforcement proceedings

It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

ENFORCEMENT PROVISIONS

SEC. 2000e-5. [Section 706]

(a) Power of Commission to prevent unlawful employment practices

The Commission is empowered, as hereinafter provided, to prevent any person from engaging in any unlawful employment practice set forth in section 2000e-2 or 2000e-3 of this title [section 703 or 704].

(b) Charges by persons aggrieved or member of Commission of employment practices by employers, etc., filing; allegations; notice to respondent; contents of notice; investigation by Commission; contents of charges; prohibition on disclosure of charges; determination of reasonable cause; conference, conciliation, and persuasion for elimination of unlawful practices; prohibition on disclosure of informal endeavors to end unlawful practices; use of evidence in subsequent proceedings; penalties for disclosure of information; time for determination of reasonable cause

Whenever a charge is filed by or on behalf of a person claiming to be aggrieved, or by a member of the Commission, alleging that an employer, employment agency, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, has engaged in an unlawful employment practice, the Commission shall serve notice of the charge (including the date, place, and circumstances of the alleged unlawful employment practice) on such employer, employment agency, labor organization, or joint labor-management committee (hereinafter referred to as the "respondent") within ten days, and shall make an investigation thereof. Charges shall be in writing under oath or affirmation and shall contain such information and be in such form as the Commission requires. Charges shall not be made public by the Commission. If the Commission determines after such investigation that there is not reasonable cause to believe that the charge is true, it shall dismiss the charge and promptly notify the person claiming to be aggrieved and the respondent of its action. In determining whether reasonable cause exists, the Commission shall accord substantial weight to final findings and orders made by State or local authorities in proceedings commenced under State or local law pursuant to the requirements of subsections (c) and (d) of this section. If the Commission determines after such investigation that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such informal endeavors may be made public by the Commission, its officer or employees, or used as evidence in a subsequent proceeding without the written consent of the persons concerned. Any person who makes public information in violation of this subsection shall be fined not more than \$1,000 or

imprisoned for not more than one year, or both. The Commission shall make its determination on reasonable cause as promptly as possible and, so far as practicable, not later than one hundred and twenty days from the filing of the charge or, where applicable under subsection (c) or (d) of this section, from the date upon which the Commission is authorized to take action with respect to the charge.

(3)(A) For purposes of this section, an unlawful employment practice occurs, with respect to discrimination in compensation in violation of this title, when a discriminatory compensation decision or other practice is adopted, when an individual becomes subject to a discriminatory compensation decision or other practice, or when an individual is affected by application of a discriminatory compensation decision or other practice, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision or other practice.

(B) In addition to any relief authorized by section 1977A of the Revised Statutes (42 U.S.C. 1981a), liability may accrue and an aggrieved person may obtain relief as provided in subsection (g)(1), including recovery of back pay for up to two years preceding the filing of the charge, where the unlawful employment practices that have occurred during the charge filing period are similar or related to unlawful employment practices with regard to discrimination in compensation that occurred outside the time for filing a charge.

(f) Civil action by Commission, Attorney General, or person aggrieved; preconditions; procedure; appointment of attorney; payment of fees, costs, or security; intervention; stay of Federal proceedings; action for appropriate temporary relief pending final disposition of charge; jurisdiction and venue of United States courts; designation of judge to hear and determine case; assignment of case for hearing; expedition of case; appointment of master

(1) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) or (d) of this section, the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission may bring a civil action against any respondent not a government, governmental agency, or political subdivision named in the charge. In the case of a respondent which is a government, governmental agency, or political subdivision, if the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission shall take no further action and shall refer the case to the Attorney General who may bring a civil action against such respondent in the appropriate United States district court. The person or persons aggrieved shall have the right to intervene in a civil action brought by the Commission or the Attorney General in a case involving a government, governmental agency, or political subdivision. If a charge filed with the Commission pursuant to subsection (b) of this section is dismissed by the Commission, or within one hundred and eighty days from the filing of such charge or the expiration of any period of reference under subsection (c) or (d) of this section, whichever is later, the Commission has not filed a civil action under this section or the Attorney General has not filed a civil action in a case involving a government, governmental agency, or political subdivision, or the Commission has not entered into a conciliation agreement to which the person aggrieved is a party, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, shall so notify the person

aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge (A) by the person claiming to be aggrieved or (B) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, to intervene in such civil action upon certification that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending termination of State or local proceedings described in subsection (c) or (d) of this section or further efforts of the Commission to obtain voluntary compliance.

(5) It shall be the duty of the judge designated pursuant to this subsection to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited. If such judge has not scheduled the case for trial within one hundred and twenty days after issue has been joined, that judge may appoint a master pursuant to rule 53 of the Federal Rules of Civil Procedure.

STATEMENT OF THE CASE

In 1981, this Court held in Hilliard v Volcker, 659, F.2d 1125 (1981), that it is the duty of the federal agency involved to advise a pro se litigant of their rights to apply to be appointed counsel to represent them. The EEOC did not make Logan aware of this right. According to Hilliard, as a result of not being aware of this right, the appellant was "prejudiced by lack of legal representation".

As stated in Hilliard, "We would mock Title VII's scheme of lay-initiated lawsuits if we failed to realize that Congress must have contemplated a step, at some point in the process, assuring that complainants know that the court is licensed to consider, and in appropriate situations to grant, requests for an assignment of counsel." Logan was not awarded the right to have an option, she was denied her rights with the EEOC, and she was admonished for being a layman in higher courts, and involuntarily waived her claims and arguments.

This case presents the question of whether the option of applying to be provided counsel, would have allowed Logan to follow the procedural rules that ultimately led to her dismissal for summary judgement in the lower courts.

1. Logan's activities and the discrimination and retaliation.

On August 1, 2007, Logan was hired for a culinary utility (CU) position at MGM Grand Detroit Casino. During her tenure as a CU, Logan became involved with the local union as a union steward. Logan became active in the union on behalf of employees of MGM. It is during this time the discrimination and retaliation toward Logan became increasingly pervasive and severe.

Logan was denied on-the-job trainings that were awarded to similarly situated male coworkers. These trainings would have provided Logan with more experience and qualifications for promotional opportunities. Logan was denied permittance to attend a training for a five-year certification rather than the mandatory one-year certification. The certification would have provided Logan with the opportunity to advance to a higher cook classification. While Logan was denied attendance to the training, male coworkers who were similarly situated, were allowed to attend.

Logan was constantly disciplined without union representation, suspended, and harassed by supervisors, often in the presence of her male coworkers, and sometimes in private, without representation. Over the course of her seven years of employment, Logan was subjected to discrimination, retaliation, and a hostile work environment until she decided she could not physically or mentally endure the treatment any longer, leading to her resignation in December of 2014.

2. Seeking Resolutions

As a union steward, Logan knew to document the events of the hostile work environment and discrimination she faced daily. Logan filed numerous charges with the National Labor Relations Board (NLRB). Three of the charges resulted in settlement agreements with NLRB and MGM. These charges included, but were not limited to: denial and delays of the Family Medical Leave Act, denial of out-of-classification pay, suspensions, denial of overtime, and more burdensome job duties.

When Logan was forced to resign, she knew her Title VII rights were violated. Logan filed a claim of discrimination with the State of Michigan Unemployment Insurance Agency. The State of Michigan Unemployment Insurance Agency determined Logan resigned due to discrimination and was not disqualified for benefits.

Logan then filed a claim with the Equal Employment Opportunity Commission (EEOC). On day 132 of 180 days, November 17, 2015, Logan received a Dismissal and Notice of Rights from the EEOC which stated, "The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes." February 16, 2016, Logan filed a complaint, pro se, with the United States District Court Eastern District of Michigan Southern Division, for sex discrimination and retaliation under Title VII. July 13, 2017, Defendant filed a Motion for Summary Judgment. The Court held that Logan's claims were barred by the six-month statute of limitations set forth in a pre-employment "Disclosure, Release, and Authorization".

Logan then sought the assistance of the Detroit Mercy Law, Federal Pro Se Legal Assistance Clinic to appeal the decision of the district court. In an appeal before the

Sixth Circuit Court, the District Court's decision to grant summary judgment was reversed and remanded. It was determined that Plaintiff's claims could not be contractually shortened. Circuit Judge John K. Bush wrote, "The limitation period of Title VII is part of an elaborate pre-suit process that must be followed before any litigation may commence. Contractual alteration of this process abrogates substantive rights and contravenes Congress's uniform nationwide legal regime for Title VII lawsuits." (Logan v MGM Grand Detroit Casino), 939 F. 3d 824 (2019). If a contractual alteration abrogates ones substantive rights, then a procedural alteration also abrogates ones substantive rights.

On 12/20/2019 MGM filed a Second Motion for Summary Judgment. Logan again sought the legal assistance of Detroit Mercy Law, Federal Pro Se Legal Assistance Clinic. Logan was provided limited assistance with drafting her Response to Motion for Summary Judgment. Logan was denied assistance on the law and legal procedure.

On 8/24/20, Magistrate Judge Patti filed a Report and Recommendation to grant MGM's Second Motion for Summary Judgment and dismissed the case. The magistrate judge concluded that, "The fact that Plaintiff is pro se does not reduce her obligations under Rule 56. Rather, "liberal treatment of pro se pleadings does not require lenient treatment of substantive law." During this time, Logan became unable to research cases, statutes, and laws at the local law library, and was denied access to cases to support her argument on most websites without being a legally practicing member of the bar or a law student. Logan was only able to reference cases via Google Scholar, which has limited access to the law and legal procedure.

On 1/8/21, the District Court Judge adopted the Magistrate Judge's Report and Recommendation to dismiss the case. Notably, the district court judge wrote, "In the R&R Magistrate Judge Patti first concludes that the 300-day limitations period applicable to Title VII actions bars Plaintiff's claims arising from conduct before September 11, 2014, as she filed her EEOC charge on July 8, 2015.(Id. At Pg ID 1687-94.) Magistrate Judge Patti rejects Plaintiff's assertion that all of the conduct she now describes demonstrates a continuing violation of Title BII and concludes that Plaintiff failed to properly exhaust any potential continuing violation or hostile work environment claim." The Court presumed that Logan could not show that she suffered adverse action during the relevant time period. Logan's evidence and documentation demonstrated several incidents of a hostile work environment during the limitations period.

On 2/4/21, Logan filed an appeal pro se. Throughout the denials and summary judgments, Logan consistently sought legal counsel and was unable to obtain.

On 12/22/21, the Sixth Circuit Court affirmed the decision of the District Court to dismiss the case, citing procedural errors and other legal deficiencies that resulted in evidence not being considered and claims involuntarily waived.

REASONS FOR GRANTING THE PETITION

- A. To avoid erroneous deprivations of the right to counsel, this Court should clarify when the EEOC is required to inform a pro se litigant of their right to apply for an appointment of counsel.
- B. To determine a threshold of knowledge that pro se litigants are expected to have regarding procedures and laws in the judicial process, and to what extent does this lack of knowledge hinder their ability for a meaningful opportunity to be heard

In General Telephone Co. of the Northwest, Inc., v EEOC, 446 U.S. 318, 325 (1980), this Court adopted a set of standards to protect an employee's Fourteenth Amendment right to receive equal protection of the law. In General Telephone Co., it was stated, "The purpose of the 1972 amendments, plainly enough, was to secure more effective enforcement of Title VII... Congress became convinced... that the "failure to grant the EEOC meaningful enforcement powers has proven to be a major flaw in the operation of Title VII." S. Rep. No. 92-415, p.4 (1971). The 1972 amendments... accordingly expanded the EEOC's enforcement powers by authorizing the EEOC to bring a civil action in federal district court against private employers reasonably suspected of violating Title VII." The purpose of the EEOC is to enforce Title VII and other antidiscrimination laws by investigating and resolving charges via litigation in court. Logan was discouraged in bringing her charges to the EEOC because she is a pro se litigant.

In *Legislative History EEO Act of 1972* it was stated that, "...aggrieved individuals, who frequently are untrained laymen and who are not always aware of the discrimination which is practiced against them, should be given a greater opportunity to prepare their charges and file their complaints..." Logan was not provided a greater opportunity to prepare and was instead dismissed for not articulating legal arguments.

In *Hilliard v Volcker*, the Court decided that "...both the right and the power remain among those procedural niceties with which a layman may not be familiar, and complainants unaware of their rights obviously are incapable of asserting them". As told to Logan throughout all the proceedings, she did not follow procedures and rules, most common to those who practice law. Logan was denied a right to trial due to issues a layman would not be aware or privy. Had Logan been awarded her right to apply to seek counsel, Logan could have had someone to represent her and overcome the procedural errors that any layman would make.

In order to provide a level field for indigent and rich litigants, the indigent litigant should be aware of their rights to seek counsel. In *Douglas v California*, 372, U.S. 353 (1963) it was stated, "But where the merits of the one and only appeal an indigent has as of right are decided without benefit of counsel, we think an unconstitutional line has been drawn between rich and poor." In this case, as in Logan's case, the indigent was not provided the benefit of counsel, leading to the indigent being at a disadvantage to those aware and able to seek counsel prior to the determination of the case. Logan's cases were dismissed due to procedure and technicalities.

The EEOC's mission is to, "Prevent and remedy unlawful employment discrimination and advance equal opportunity for all in the workplace". This mission while full of

intention, was not provided to Logan when reaching out for help. Logan was not provided equal opportunity within her workplace and she was not provided equal opportunity in the courts because of lack of financial resources.

The EEOC's lack of enforcement due to their "burgeoning workload" and "increasing backlogs" in investigations and conciliating a charge should not, abrogate an indigent, pro se litigant's right and remedies under Title VII. Neither should the Fourteenth Amendment's guarantee of equal protection of the laws be outweighed "merely to accomplish the elimination of hearings on the merits." Reed v Reed, Administrator, 404 U.S. 71 (1971).

The Courts should grant certiorari due to MGM Grand Detroit, a billion-dollar company, and their violation of Logan's rights of gender equality in the workplace. This case takes action, opens conversation, and leads to education on how billion-dollar companies mistreat, undervalue, and discriminate against United States citizens based on their gender identity. MGM and companies like them, prey on the economic, educational, and financial disparities of their employees. MGM's status within this nation, and number of employees and subsidiaries, makes this case of paramount public interest.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Burke Logan

Date: MAY 28, 2022

